

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Squad #11	CCRB Case #: 201411460	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/03/2014 2:30 PM, Wednesday, 11/12/2014	Location of Incident: in front of 200 Port Richmond Avenue, § 87(2)(b)	Precinct: 121	18 Mo. SOL 5/3/2016	EO SOL 5/3/2016	
Date/Time CV Reported Wed, 11/12/2014 9:39 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/12/2014 9:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Dibenedetto	02078	940088	121 PCT
2. POM Jonathan Kalman	21669	945865	121 PCT
3. POM Vincenzo Trabolse	07477	942882	121 PCT
4. An officer			121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Kalman	Off. Language: On November 3, 2014, at 200 Port Richmond Avenue, PO Jonathan Kalman made remarks to § 87(2)(b) based upon race.	§ 87(2)(b)
B.POM Jonathan Kalman	Abuse: On November 3, 2014, at § 87(2)(b) in Staten Island, PO Jonathan Kalman searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Vincenzo Trabolse	Abuse: On November 3, 2014, at § 87(2)(b) in Staten Island, PO Vincenzo Trabolse searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.SGT Mark Dibenedetto	Abuse: On November 3, 2014, at § 87(2)(b) in Staten Island, Sgt. Mark Dibenedetto authorized the search of the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E.POM Vincenzo Trabolse	Abuse: On November 3, 2014, en route to the 121st Precinct stationhouse, PO Vincenzo Trabolse threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
F.POM Jonathan Kalman	Discourtesy: On November 3, 2014, at an unknown location, PO Jonathan Kalman spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G. An officer	Abuse: On November 3, 2014, at the 121st Precinct station house, an officer searched § 87(2)(b)'s cell phone.	§ 87(2)(b)
H. An officer	Abuse: On November 3, 2014, at the 121st Precinct station house, an officer damaged § 87(2)(b)'s property.	§ 87(2)(b)
I.POM Vincenzo Trabolse	Abuse: On November 12, 2014, in front of § 87(2)(b) in Staten Island, PO Vincenzo Trabolse stopped § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.POM Vincenzo Trabolse	Abuse: On November 12, 2014, in front of § 87(2)(b) in Staten Island, PO Vincenzo Trabolse searched § 87(2)(b) .	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On November 3, 2014, at approximately 2:30 p.m., § 87(2)(b) stepped in front of an unmarked police vehicle being driven by PO Jonathan Kalman, who was with Sgt. Mark DiBenedetto, both of the 121st Precinct. When § 87(2)(b) refused to move and stopped traffic, PO Kalman allegedly stated, “Get out of the way, nigger (**Allegation A**).” When § 87(2)(b) subsequently refused to provide identification, the officers attempted to effect his arrest. § 87(2)(b) who was known to the officers, was at the scene of the incident, and tried to record it using his cell phone. While the officers tried to handcuff § 87(2)(b), § 87(2)(b) intentionally kicked or threw PO Kalman’s handcuffs into a sewer.

After § 87(2)(b) was removed from the scene, Sgt. DiBenedetto and PO Kalman went to § 87(2)(b)’s residence, § 87(2)(b) in Staten Island, and found § 87(2)(b) inside his vehicle. PO Kalman then placed § 87(2)(b) under arrest for § 87(2)(b), § 87(2)(a) 160.50

(encl. X). After § 87(2)(b) was arrested, PO Kalman and PO Vincenzo Traborse, also of the 121st Precinct, who had responded to § 87(2)(b)’s arrest and was subsequently present for § 87(2)(b)’s arrest, searched § 87(2)(b)’s vehicle (**Allegations B, C, and D**). § 87(2)(b) was then transported to the 121st Precinct stationhouse. He alleged that during his transport, PO Traborse told him, “Shut the fuck up, or you’re going to need a new set of dentures” (**Allegations E**). He also alleged that at some point in the incident, either on the scene, or when he was in the holding cell at the stationhouse, PO Kalman told him, “Hey asshole—I hope you like your felony” (**Allegation F**). § 87(2)(b) also alleged that when his cell phone was returned to him upon his release, all of the content he had stored therein had been deleted (**Allegations G and H**).

On November 12, 2014, at 3:55 p.m., Sgt. DiBenedetto, PO Kalman and PO Traborse conducted a car stop at the intersection of Ann Street and Heberton Avenue in Staten Island. § 87(2)(b) saw the officers while he was walking from where he worked, at a deli located at § 87(2)(b), to his house at § 87(2)(b). § 87(2)(b) reported that he was carrying the box cutter he used for work in the front right pocket of his jeans, but denied that it was visible. PO Traborse observed the knife on § 87(2)(b)’s person and suspected that it was an illegal gravity knife. PO Traborse subsequently stopped § 87(2)(b) and removed the knife from his person (**Allegations I and J**). He arrested § 87(2)(b) for criminal possession of a weapon (encl. 8A-E). On § 87(2)(b) [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)] § 87(2)(b), § 87(2)(b) pled guilty to this charge [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)] (encl. 15HH-KK).

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On July 1, 2015, an inquiry was sent to the NYC Comptroller’s Office regarding whether § 87(2)(b) has filed a notice of claim regarding the November 3, 2014 incident, or § 87(2)(b) has filed a notice of claim regarding either incident. Results are pending and will be included in the case file upon their receipt.
- [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) §§ 86(1)(3)&(4) § 87(2)(c)

Civilian and Officer CCRB Histories

- This complaint is § 87(2)(b) and § 87(2)(b)s first with the CCRB (encl. 4E-F).
- PO Kalman has been a member of the NYPD for seven years, and has 32 CCRB allegations against him. Seven of these allegations have been substantiated. In CCRB case number 201108271, vehicle search, frisk and backpack search allegations were substantiated against PO Kalman. The Board recommended Command Discipline regarding all three substantiated allegations, but the NYPD disposition for all three was instructions. Instructions were imposed regarding the vehicle search allegation, but the NYPD penalty for the other two remains pending. In CCRB case number 201301656, a frisk allegation was substantiated against PO Kalman, and the Board recommended charges. However, the NYPD disposition was no disciplinary action due to the expiration of the statute of limitations, and no penalty was imposed (encl. 4A-B).
- PO Trabolse has been a member of the NYPD for eight years, and has 14 CCRB allegations against him. Three of these allegations, all involving CCRB case number 201307635, were substantiated against PO Trabolse. The Board recommended command discipline for the stop, frisk and personal search allegations that were substantiated against PO Trabolse. The NYPD disposition was command discipline-A for all three. Command discipline-A and formalized training were imposed regarding the substantiated frisk allegation, but the penalties for the other two substantiated allegations remain pending (encl. 4C).
- Sgt. DiBenedetto has been a member of the NYPD for nine years, and has eight CCRB allegations against him. Three of these allegations, all involving 201310099, were substantiated against Sgt. DiBenedetto. The Board recommended charges regarding the two strip-search allegations and the retaliatory arrest allegation that were substantiated against Sgt. DiBenedetto in that case. The NYPD dispositions and penalties for these allegations remain pending (encl. 4D).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) reported that when his cell phone was returned to him following his arrest, he discovered that the content that he had saved therein was deleted. § 87(2)(b) did not see any officer using his phone or searching it. All of the officers interviewed denied searching § 87(2)(b)s phone or erasing any of the content stored therein, or being aware of any officer that did so. § 87(2)(g)

Allegations not pleaded

- § 87(2)(g)

- **Discourtesy:** Because PO Traborse allegedly used discourteous language simultaneously with the threat of force, the discourtesy is being subsumed into the threat of force allegation.

Allegation A—Offensive Language: On November 3, 2014, at 200 Port Richmond Avenue, PO Jonathan Kalman made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) alleged in his phone statement that PO Kalman yelled to him, “Get the fuck out of the way, nigger.” § 87(2)(b) was uncooperative with the investigation (encl. 16C). § 87(2)(b) who stated that he could not hear everything the officers said, did not allege he heard this. The officers denied that this statement was made.

§ 87(2)(g)

Allegation B—Abuse of Authority: On November 3, 2014, at § 87(2)(b) in Staten Island, PO Jonathan Kalman searched the car in which § 87(2)(b) was an occupant.

Allegation C—Abuse of Authority: On November 3, 2014, at § 87(2)(b) in Staten Island, PO Vincenzo Traborse searched the car in which § 87(2)(b) was an occupant.

Allegation D—Abuse of Authority: On November 3, 2014, at § 87(2)(b) in Staten Island, Sgt. Mark DiBenedetto authorized the search of the car in which § 87(2)(b) was an occupant.

It is undisputed that PO Kalman and PO Traborse searched § 87(2)(b)'s vehicle. PO Traborse testified that Sgt. DiBenedetto instructed him to search § 87(2)(b)'s vehicle, and as a result, he searched the “lungeable, grabbable areas,” which included the front and back seats, the floor, and the center console. He stated that because the vehicle was a Ford Explorer, and could see into the rear of the car from the back of the car, he did not consider that area a trunk when he searched it, and added that “it smelled like gasoline” so he wanted to make sure the vehicle was not hazardous (encl. 8N-P). PO Kalman stated that he searched the vehicle because § 87(2)(b) who had been arrested 40-50 times, was known to carry weapons and contraband, and because this was a felony arrest, they could have taken the vehicle, although he admitted they did not consider impounding the vehicle. PO Kalman stated that he looked under the seats and between the front seats. He also explained that because the trunk was visible and not an enclosed trunk, he searched it as well. PO Kalman denied that he suspected § 87(2)(b) of being in possession of any weapons at the time of this incident (encl. 9O-R). Sgt. DiBenedetto denied searching § 87(2)(b)'s vehicle, and did not recall whether any other officer did (encl. 7F-H).

When the officers ran § 87(2)(b)'s information to obtain his address to effect his arrest after he left the scene of § 87(2)(b)'s arrest, they determined that he had numerous license suspensions. The officers would have attempted to arrest § 87(2)(b) even without his commission of this violation of vehicle and traffic law. § 87(2)(b) was not driving when they initially observed him, and only witnessed his vehicle in motion as he was attempting to pull out of his parking spot when they arrived at his house to apprehend him.

An officer may conduct a limited search of a vehicle when there is a substantial likelihood of a weapon being present in the vehicle, thereby posing an articulable and specific threat to the officer's safety, or if there is probable cause to believe that the vehicle contains contraband or

evidence of a crime. An automobile search incident to a recent occupant's arrest is permissible if the arrestee remains within reaching distance of the vehicle, or the officer reasonably believes that the vehicle contains evidence related to the crime of arrest. *People v. Newman*, 96 AD2d (1st Dept. 2012), *People v. Baez*, 24A.D.3d 112 (1st Dept. 2005) (encl.1A-H).

§ 87(2)(g)

Allegation E—Abuse of Authority: On November 3, 2014, en route to the 121st Precinct stationhouse, PO Vincenzo Trabolse threatened § 87(2)(b) with the use of force.

Allegation F—Discourtesy: On November 3, 2014, at an unknown location, PO Jonathan Kalman spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that during his transport to the stationhouse, PO Trabolse told him, “Shut the fuck up, or you’re going to need a new set of dentures.” PO Trabolse did not recall whether he transported § 87(2)(b) to the stationhouse. PO Trabolse denied making the alleged profane threat to § 87(2)(b) using any profanity toward him, or threatening him with any force. Sgt. DiBenedetto believed that he called another unit to the scene to transport § 87(2)(b) and PO Trabolse and PO Greene arrived in response. PO Kalman believed that he transported § 87(2)(b) to the stationhouse. Sgt. DiBenedetto and PO Kalman denied hearing PO Trabolse tell § 87(2)(b) “Shut the fuck up, or you’re going to need a new set of dentures”, any officer using profanity toward him or threatening him with the use of any force.

§ 87(2)(b) further alleged that at some point, either on the scene, or when he was in the holding cell at the stationhouse, PO Kalman told him, “Hey asshole—I hope you like your felony.” PO Kalman denied telling § 87(2)(b) “Hey asshole—I hope you like your felony,” telling § 87(2)(b) that he was being charged with a felony, or calling § 87(2)(b) an “asshole” at any point. Sgt. DiBenedetto and PO Trabolse denied hearing PO Kalman make this comment or use any profanity toward § 87(2)(b).

§ 87(2)(g)

Allegation G—Abuse of Authority: On November 3, 2014, at the 121st Precinct station house, an officer searched § 87(2)(b)s cell phone.

Allegation H—Abuse of Authority: On November 3, 2014, at the 121st Precinct station house, an officer damaged § 87(2)(b)'s property.

§ 87(2)(b) alleged that when his cell phone was returned to him following his arrest, he discovered that all of the content that he had stored therein had been deleted. As discussed in the Explanation of Subject Officer Identification section above, § 87(2)(b) did not see which officer or officers searched his cell phone, and all of the officers interviewed denied doing so or being aware of any officer that had. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation I—Abuse of Authority: On November 12, 2014, in front of § 87(2)(g) in Staten Island, PO Vincenzo Trabolse stopped § 87(2)(b)

Allegation J—Abuse of Authority: On November 12, 2014, in front of § 87(2)(g) in Staten Island, PO Vincenzo Trabolse searched § 87(2)(b)

§ 87(2)(b) acknowledged that he had a box cutter in the front right pocket of his jeans, although he denied that it was displayed, or visible outside of his pocket. He denied that there were bulges of any size or shape protruding from any of his pockets. He denied reaching or touching any of his pockets, or reaching for the box cutter. It is undisputed that § 87(2)(b) told the officers that he used the box cutter to cut boxes at his job at the store located on § 87(2)(b). § 87(2)(b) reported that after this incident, PO Trabolse took § 87(2)(b) to the store, and confirmed with a woman behind the front desk that § 87(2)(b) worked there. However, all the officers interviewed denied that any officer visited the store or attempted to obtain any information regarding § 87(2)(b)'s reported employment.

Field Team Investigators Kevin O'Connor and Bernardo Gutierrez visited the § 87(2)(b) located at § 87(2)(b) on May 28, 2015, and obtained a statement from § 87(2)(b). § 87(2)(b) confirmed that § 87(2)(b) used to work at the § 87(2)(b) and would break down boxes as part of his job. § 87(2)(b) brought his own box cutter to work, and would never leave it at the store after he left. § 87(2)(b) could not recall how big § 87(2)(b)'s box cutter was or what it looked like. § 87(2)(b) denied that any member of the NYPD ever came to speak to him regarding § 87(2)(b). § 87(2)(b) did not recall § 87(2)(b) having any interaction with the NYPD inside the store (encl. 6K).

Sgt. DiBenedetto, PO Kalman and PO Trabolse all testified that § 87(2)(b) initiated an interaction with them by calling out to them while they were conducting an unrelated car stop. The officers testified that when § 87(2)(b) drew their attention to him, they noticed that he had a knife clipped to his pants pocket. The officers believed from the type of the clip that it was a gravity knife. Sgt. DiBenedetto testified that even if it were not a gravity knife, § 87(2)(b) could be summonsed for possession of a knife.

It is undisputed that § 87(2)(b) hurried to his door when he saw the officers approaching him. When PO Trabolse caught up with § 87(2)(b) he removed the knife from § 87(2)(b)'s pocket. The officers testified that PO Trabolse tested the knife, and confirmed that it was a gravity knife. PO Trabolse then effected § 87(2)(b)'s arrest for criminal possession of a weapon in the fourth degree (encl. 8A-E). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

When an officer has reasonable suspicion that an individual has committed, is committing, or is about to commit a crime, he may stop that individual. An officer may arrest an individual when

[illegible]

§ 87(4-b), § 87(2)(g)

[illegible]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Response	Percentage
Yes, the current administration is responsible	85%
No, the current administration is not responsible	15%

Pod: 11

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date